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RL:0465

SB 2638-82 RELATING TO TRANSFERS OF REAL PROPERTY IN HAZARDOUS AREAS

Statement for
Senate Committee on
Consumer Protection and Commerce
Public Hearing - March 1982

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SB 2638 would add to Hawaii Revised Statutes a new chapter requiring the disclosure of certain hazards when real property is sold or otherwise transferred. This statement on the bill has been submitted for review to the Legislative Subcommittee of the Environmental Center of the University of Hawaii but does not reflect an institutional position of the University.

SB 1638 would require the disclosure of two kinds of hazards: 1) the natural hazards of flooding by streams or tsunamis; and 2) the artificial hazards associated with proximity to airports. The bill would require "timely notification" to prospective buyers, lessees, and tenants prior to any sale, lease, transfer etc of any real property if the property lies within any of certain hazard zones. It would also require that a statement that the property lies within such a zone be included in any instrument of transfer so long as the property shall be included within the zone. We will refer to both requirements as disclosure requirements.

The intent of the proposed hazard disclosure requirement is certainly admirable, especially in the case of urban and rural lands. However, we suggest that what constitutes "timely notification" should be defined, and that the disclosure requirement should be limited to urban and rural lands. There would seem to be no significant purpose to the requirement in the case of transfers of conservation lands, and very little purpose in the case of transfers of agricultural lands. Our further comments relate solely to the disclosure of the hazards of flooding by streams and by tsunamis.

With respect to flooding in general, the bill refers to the "special flood hazard area as officially designated on FIA Flood Insurance Administration Maps," and with respect to tsunami inundation to "anticipated inundation areas designated on the Department of Defense's Civil Defense Tsunami Inundation Maps. The FIA maps show areas subject

to tsunami inundation as well as stream flooding. However the tsunami inundation zones on the FIA maps are smaller than and included within those delineated by the Civil Defense division. Hence, in terms of the disclosure requirements of SB 2638, the FIA maps will be definitive with respect to the stream-flood hazard alone.

Stream-flood zoning

There are two series of FIA maps: 1) "Floodway" (Flood boundary and flooding) maps, and 2) "FIRM's" (Flood insurance rate maps). Between the two-series there are some differences in the stream-flood hazard zones identified and the designations of these zones, as indicated below:

	<u>Floodway maps</u>	<u>FIRM's</u>
<u>Areas of detailed mapping:</u>		
Floodway 100-year flood zone	Floodway Floodway fringe	} Zone A, may be divided into subzones
100- to 500-year flood zone	(500-year flood zone outside flood fringe)	
Minimal hazard zone	---	Zone C
<u>Areas without detailed mapping:</u>		
	---	Zone D

All the zones and subzones shown on the FIRM's as zones A & B may be considered "special flood hazard areas". Even Zone C is a special area, one of especially small flood hazard. Only Zone D is clearly not special, but that zone includes floodways and the equivalent of Zones A as well as Zones B and C. Rather than refer to the "special flood hazard area," the bill should be specific as to which of the zones on which of the series of maps its provisions apply, using terminology used in the maps.

The maps, published on a scale of 1 inch/1000 feet, show streets but not lots. Hence in the case of a lot near one of the zone boundaries, it is difficult to determine from the maps in which zone the lot lies or whether it is crossed by a boundary. In most cases, the criteria used in plotting the boundaries would permit more precise determination of the boundary locations than the maps allow. By reference to the criteria used in plotting boundaries on the maps rather than, or in addition to, the maps themselves, SB 2638 could require the most extensive and precise stream-hazard disclosures. However, to meet the requirement, land owners might in some cases have to employ surveyors or engineers to determine in what zones or combinations of zones their parcels of land falls. Alternatively the bill could allow statements of uncertainty as to stream-flood hazard in cases where such professional assistance would be necessary for precise determination.

Tsunami hazard zones

The areas delineated in the Civil Defense maps would be described better as those of "potential inundation" than as those of "anticipated inundation" in SB 2638. In the light of their purpose, they would be described best as "evacuation zones."

As published in the telephone directories, the Civil Defense tsunami inundation areas maps are on a very small scale and show only major streets. Along many parts of the coast it is clear from the maps that the inland boundry of the area follows streets. Where this is not clear, a surveyor or engineer could generally determine the boundary location with adequate precision using the criteria on which the boundaries were determined. Hence the same alternatives for coping with imprecision in present boundary location in the case of stream-flood hazard zones are available for coping with the imprecision in the case of the tsunami hazard zones.